October 15, 2013

Mr. Ed Eckerle
Planning, Rule Development and Area Sources
SCAQMD
21865 Copley Drive
Diamond Bar, CA 91765
eeckerle@aqmd.gov

and

Mr. James Koizumi
Planning, Rule Development and Area Sources
SCAQMD
21865 Copley Drive
Diamond Bar, CA 91765
jkoizumi@aqmd.gov

COMMENTS ON PROPOSED AMENDED RULE 1420.1 AND RELATED CEQA COMPLIANCE

Dear Mr. Koizumi:

In the interests of disclosure, since the Department of Toxic Substances Control's (DTSC) Office of Legal Counsel (OLC) has indicated to me that it does not wholly subscribe to allowing me unabridged First Amendment rights, I hereby disclose that I work in the Brownfields and Environmental Restoration Program (BERP) at DTSC's Chatsworth office. However, this letter to you is written as a member of the concerned public not as a State of California employee.

Please note that I do not necessarily oppose the South Coast Air Management District (SCAQMD) Proposed Amended Rule 1420.1 (PAR). However, it does not solve all of the long-standing issues that SCAQMD has been ducking to the public's costs. This is worrisome. Similarly, some of the environmental elements associated with the draft EIR (dEIR) are quite troublesome---betraying a deliberate neglect of the environmental consequences of taking only a half-step. Neither is acceptable.

SCAQMD, through its permitting process, is responsible for hazardous wastes depositing and accumulating on the streets, soils, and roofs of the areas surrounding the two secondary lead smelters that it permits. Specifically, the SCAQMD permitted emissions settle out of the air and deposit on surfaces at and around the smelters. This deposited lead has been found by DTSC to have accumulated to hazardous waste levels. In other words, lead that SCAQMD has permitted to go past the site boundary in the ambient air at the low concentration of 1.5 µg/m3 [now 0.15 µg/m3], averaged over 30 consecutive days, has been found on the sidewalks and streets at concentrations in excess of the 1000 mg/kg hazardous waste level. [Title 22 CCR §66261.24] At Quemetco some lead concentrations were reported in DTSC soil sampling as over 5000 mg/kg in 2004. [http://www.envirostor.dtsc.ca.gov/regulators/deliverable_documents/5665586709/August_23_2004_Approval_Letter_EM.pdf] and at Exide for example as 22, 000 mg/kg in DTSC soil sampling in November 2008 [http://www.envirostor.dtsc.ca.gov/regulators/deliverable_documents/7895222306/2009%20Emergency%20Workplan%20Conditional%20Approval%20Letter.pdf]. SCAQMD required these facilities to use the U.S. EPA Hotspots Analysis Reporting Program (HARP), which in turn utilizes the U.S. EPA Industrial Source Complex- Short Term (ISCST3) dispersion model, to produce health risk assessments (HRAs).

DTSC does similarly. So, why if this protocol is so accurate in determining risk does lead accumulate on neighboring public and privately owned areas to levels that blow past the U.S.EPA Risk Screening Levels for lead and other constituents and even exceed hazardous waste levels. What is SCAQMD doing wrong?

DTSC has had Quemetco clean up its immediate off-site perimeter and seen that re-contaminate from 2004 to 2008. [http://www.envirostor.dtsc.ca.gov/regulators/deliverable_documents/8940061807/Total_Metals_Analysis_Report.pdf] DTSC has had Exide do the same cleanup and also seen the cleaned areas recontaminate. Doesn't this tell SCAQMD something is wrong with their application of the HARP?

I challenge SCAQMD to provide an evaluation of the dispersion model that it uses, part of the HARP, and compare that with the actual, measured accumulations of lead in the soils, on the sidewalks, streets, and neighboring roofs around the smelters.

The objectives of PAR 1420.1 are stated as being "…to protect public health by reducing arsenic, benzene,and 1,3-butadiene emissions from large lead-acid battery recycling facilities by adding:

- Point source emission limits for arsenic, benzene and 1,3-butadiene;
- Compliance schedules;
- Arsenic ambient air quality concentration limits;
- Differential pressure requirements;
- Ambient arsenic monitoring;
- Additional periodic source testing; and
- Clarifying that all emissions are to be ducted to control equipment."

These objectives are insufficient and do not address the consequences of SCAQMDs permitted emissions of hazardous waste constituents.

SCAQMD recitation of its "history" for both Quemetco and Exide omitted some important things:

- SCAQMD states that "Quemetco Inc. prepared and submitted an AB 2588 Health Risk Assessment to the SCAQMD in December 2000. After several public meetings and various comments, the SCAQMD staff modified and approved the AB 2588 Health Risk Assessment in December 2005." BETWEEN 2004 and 2005 DTSC found lead around the entire perimeter of Quemetco at levels in excess of risk and even hazardous waste and required Quemetco to clean it up. SCAQMD further states that "The modified AB 2588 Health Risk Assessment reported a non-cancer hazard index of less than 1.0, a maximum individual cancer risk of 21.8 in one million, and a cancer burden of 1.15, which triggered risk reduction requirements under Rule 1402 because the cancer burden exceeded the rule limit of 0.5." and that "The AB 2588 Health Risk Assessment showed that the primary risk driver was arsenic." Pursuant to Rule 1402, Quemetco prepared a Risk Reduction Plan in April 2006, subsequently approved by the SCAQMD and implemented by Quemetco." SCAQMD ignored the reported off-site accumulation of lead. SCAQMD states that "The Risk Reduction Plan proposed installation of a wet electrostatic precipitator (ESP) to control particulates and metals including arsenic, and possible installation of a regenerative thermal oxidizer (RTO) to control organics. Quemetco opted to install both the wet ESP and RTO." It further states that "Based on a permit condition, Quemetco conducted source tests in January 2009, and prepared and submitted another Health Risk Assessment to demonstrate compliance with Rule 1402. The source tests and subsequent Rule 1402 Health Risk Assessment were based on the maximum throughput, as specified in their permit to operate. SCAQMD staff reviewed, modified, and approved as modified, the Quemetco Rule 1402 Health Risk Assessment

in February 2010." SCAQMD ignored the fact that DTSC examined the issue of re-contamination at Quemetco in 2012 and found lead again above health risk and hazardous waste levels.

- "In April 1999, SCAQMD approved Exide's AB 2588 Health Risk Assessment with a cancer risk of 2.3 in a million, and acute hazard index of 0.53, and a chronic hazard index of 0.04. The cancer risks were primarily due to arsenic and cadmium emissions and the non-cancer risks were primarily from lead emissions. In December 2006, SCAQMD requested that Exide submit an updated AB 2588 Health Risk Assessment because of their recently reported chlorinated dioxins and furans emissions, which were not considered in the previous AB 2588 Health Risk Assessment. Exide submitted the updated AB 2588 Health Risk Assessment in July 2007 and it estimated cancer risks to be 10.7 in a million (primarily from arsenic, lead, and polychlorinated dibenzofurans), non-cancer acute hazard index to be 0.1 (primarily from arsenic), and the non-cancer chronic hazard index to be 0.056 (primarily from cadmium, sulfuric acid, and hydrogen sulfide). In July 2010, SCAQMD determined that the source tests used to estimate toxic emissions from the facility and for the HRA were inadequate and required that a new series of source test be conducted. Exide conducted numerous source tests from September 2010 to October 2011 and a health risk assessment was submitted pursuant to the AB 2588 program in February 2012. Due to SCAQMD comments and additional source tests, Exide prepared and submitted a revised health risk assessment in January 2013. SCAQMD staff reviewed, modified, and approved as modified the health risk assessment in March 2013. The approved health risk assessment reported a maximum individual cancer risk of 156 in one million, a non-cancer chronic hazard index of 63,a non-cancer acute hazard index of 3.8, and a cancer burden of 10 triggering risk reduction requirements under Rule 1402 because all heath risk thresholds were exceeded. The maximum individual cancer risk was calculated at a worker receptor that is closer to the emission source than a nearby resident. The health risk assessment showed that the primary risk drivers were arsenic, and to a lesser extent benzene and 1,3-butadiene. Pursuant to Rule 1402, Exide has prepared and submitted a risk reduction plan to the SCAQMD on August 28, 2013. The SCAQMD staff is currently reviewing the risk reduction plan." DTSC sampled soils where lead was elevated and analyzed for and found dioxins and furans had also accumulated. SCAQMD might want to mention this.

- "The second approach is amending Rule1420.1 to specify performance standards in order to reduce health risk. SCAQM staff has chosen to pursue both paths simultaneously. While the Rule 1402 regulatory path is underway,SCAQMD staff will amend Rule 1420.1 to specify technologically-based performance standards to reduce the health risk from arsenic, benzene and 1,2-butediene. SCAQMD staff considers this parallel approach to provide assurances that public health will be protected in the most effective and expeditious manner by: (1)establishing the lowest level of toxic emissions currently being met by similar sources; and (2) meeting these limits in a more expeditious time frame than Rule 1402 provides. The amendments for Rule 1420.1 are being conducted with input from a working group, open to the public, and follows traditional rulemaking procedures with a Public Workshop, environmental and socioeconomic analysis, a set hearing, and Public Hearing. By utilizing the rulemaking process, the SCAQMD staff is able to include additional mechanisms into the proposed amended rule that go beyond Rule 1402 and a risk reduction plan, such as, lower health risk thresholds, ambient monitoring, and other measures to ensure maximum public health protection." The foregoing is simply not enough to address the airborne emission deposition and accumulation of the emitted constituents.

In its selected risk program SCAQMD relies on performance of atmospheric dispersion analyses using screening or representative meteorology on one or multiple facilities using the U.S. Environmental Protection Agency's atmospheric modeling software ISCST3 and BPIP. Either SCAQMD selectively ignores portion of the modeling that would address accumulation and deposition or the software is not sufficiently sophisticated to recognize accumulation of deposited airborne emissions as an issue. Either way, SCAQMD and DTSC have BOTH been aware of the issue at the smelters subject to proposed Rule 1420.1 since the late 1980's when drifted lead dust was observed on the sidewalks outside Exide and cited.

It is requested that SCAQMD revise the Proposed Amended Rule 1420.1 and to not certify a fatally flawed dEIR. The following needs to be undertaken:

- **Add a component to Rule 1420.1 that eliminates deposition/accumulation of ANY facility constituent emissions to levels above the 2012 USEPA Region 9 Regional Screening Levels (RSLs) and any subsequent revisions thereto.**

- **Add a component to Rule 1420.1 that establishes a deposition/accumulation monitoring program for ALL facility constituent emissions within the area emission deposition/accumulation** footprint. "Subdivision (a) – Purpose The purpose of this rule is to also protect public health by reducing arsenic, benzene, and 1,3- butadiene emissions from these facilities" would be added to the purpose."

- **Make specific changes to the environmental analysis in the dEIR, etc. to remove or clarify deceptive elements, and**

- **Re-notice the proposed Rule 1420.1 and dEIR with appropriate changes to reflect a more honest appraisal of the situation.**

It is requested that SCAQMD modify the proposed monitoring protocols for the secondary lead smelters. SCAQMD needs to face reality and routinely require more than ambient air monitoring. Specifically SCAQMD has itself performed this kind of monitoring in at Riverside Cement [http://www.aqmd.gov/RiversideCement/RiversideCement.html]. I ask that SCAQMD face up to its culpability at the two lead smelters and make airborne deposition/accumulation monitoring part of this Rule. I ask that a deposition/accumulation level be set, that at a minimum, matches the U.S. EPA's Regional Screening Level (RSL) for lead which, as of May 2013, is 400mg/kg for residential non-cancer risk in soil. More appropriately, SCAQMD should use California's Office of Environmental Health hazard Assessment's (OEHHA) residential California Human Health Soil Screening Level (CHSSL) for lead in soil, which as of September 2010, is 80 mg/kg. I further ask that **ALL** other emission constituents, including dioxins and furans, from the two smelters have similar deposition/accumulation levels set for them using the RSLs or CHHSLs. SCAQMD proudly states that "Since 1991, the SCAQMD has collected ambient air samples near facilities that use or process materials containing lead. Therefore I further ask that SCAQMD immediately commence to examine the deposition/accumulation potential around all of its permitted Air Toxic "Hot Spot" facilities---not just for lead but for all the Toxic Air Contaminants (TACs) that are permitted to be emitted. Please do not simply try to punt this issue to DTSC. That agency has failed in its responsibilities to adequately address and follow through in its permits on airborne emission deposition/accumulation monitoring despite its clear authorities to do so under Title 22 CCR §66264.700 et seq. DTSC routinely cites your permits in its permit as solely fulfilling its responsibilities. That is clearly wrong, but this proposed Rule puts SCAQMD up at bat and offers an opportunity for you to force the issue. Some resolution must be made in order to protect human health and the environment.

Thank you for your consideration.

Philip B. Chandler
4501 W. Channel Islands Blvd., # 86
Oxnard, CA 93035
Oxnard (805) 382-3365
Topanga (310) 455-1962
Work (818) 717-6608
[philipbchandler@earthlink.net]

CC:

State Senator Fran Pavley
Calabasas District Office
5010 N. Parkway Calabasas, #202,
Calabasas, CA 91302
c/o elizabeth.fenton@sen.ca.gov , kara.seward@sen.ca.gov ,
and max.reyes@sen.ca.gov

State Senator Hannabeth Jackson
Santa Barbara District Office
225 E. Carrillo St, Suite 302
Santa Barbara, CA 93101
c/o jennifer.richard@sen.ca.gov , barr.linda@sen.ca.gov

State Assemblyman Richard Bloom
Santa Monica District Office
2800 28th Street, Suite 150
Santa Monica, CA 90405
c/o sean.macneil@asm.ca.gov , guy.strahl@asm.ca.gov

State Assemblyman Das Williams
Oxnard District Office
Oxnard Transportation Center
201 East Fourth Street, Ste. 209A
Oxnard, CA 93030
c/o [hillary.blackerby@asm.ca.gov]

Dr. Sean B. Hecht
Executive Director, Environmental Law Center
UCLA School of Law
405 Hilgard Avenue
Los Angeles, CA 90095
hecht@law.ucla.edu

Dr. Joseph K. Lyou, Ph.D.
President and CEO
Coalition for Clean Air
800 Wilshire Blvd., Suite 1010
Los Angeles, CA 90017
joe@ccair.org

Ms. Liza Tucker
Consumer Advocate
Consumer Watchdog
2701 Ocean Park Blvd, Suite 112
Santa Monica, CA 90405
[liza@consumerwatchdog.org]

Ms. Jody Sparks
Toxic Assessment Group
P.O. Box 186
Stewart Point, CA 95480
jodycs@mcn.org

Mr. Bradley Angel
Greenaction for Health and Environmental Justice
bradley@greenaction.org